

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

DANIEL PAUL STARR,)
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Plaintiff,)
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)
-vs-) Case No. CIV-13-700-F
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OFC. KOBER, et al.,)
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)
Defendants.)

ORDER

On October 6, 2015, United States Magistrate Judge Bernard M. Jones issued a Supplemental Report and Recommendation, recommending that (1) plaintiff's Amended Complaint (doc. no. 61) be stricken; (2) the federal claims in plaintiff's Complaint (doc. no. 1), including the Supplement (doc. no. 14-1), be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and § 1915A(b)(1) for failure to state any claim upon which relief may be granted; (3) the dismissal of the federal claims count as a strike pursuant to 28 U.S.C. § 1915(g); and (4) the court decline to exercise supplemental jurisdiction over the state law claims, if any, alleged by plaintiff.

Presently before the court is the objections of plaintiff to the Supplemental Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1), the court has conducted a de novo review of the matter. Having done so, the court concurs with the analysis of Magistrate Judge Jones. The court finds plaintiff's objections to be without merit. With respect to the excessive force claim under 42 U.S.C. § 1983, the court also finds that plaintiff has failed to demonstrate grounds for application of the prison mailbox rule or equitable tolling. Thus, the court finds that the § 1983 excessive force claim is subject to dismissal as untimely filed and due to a failure to

state sufficient facts to allege a plausible claim for relief. The court accepts, adopts and affirms the Supplemental Report and Recommendation in its entirety.

Accordingly, the Supplemental Report and Recommendation issued by United States Magistrate Judge Bernard M. Jones on October 6, 2015 (doc. no. 111) is **ACCEPTED, ADOPTED** and **AFFIRMED**. The Amended Complaint (doc. no. 61) is stricken. The federal claims in the Complaint (doc. no. 1), including the Supplement (doc. no. 14-1), are dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and § 1915A(b)(1) for failure to state any claim upon which relief may be granted. With the dismissal of the federal claims and the court declining to exercise supplemental jurisdiction over the state claims, if any, those claims, to the extent alleged, are dismissed without prejudice under 28 U.S.C. § 1367(c)(3).

The dismissal of the federal claims counts as a strike pursuant to 28 U.S.C. § 1915(g).

DATED October 28, 2015.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE